

1959

CONGRESSIONAL RECORD — SENATE

17397

Mr. MUNDT. Mr. President, I believe the amendments added by the House are rather helpful to this proposed legislation. Rather than send this bill to conference in the closing days of this session, I move that the Senate concur in the amendments of the House. The House amendments preserve the original purpose and program of S. 2504.

Mr. MORSE. Mr. President, may we have an explanation?

Mr. MUNDT. I will be happy to explain it. May I say to the distinguished Senator from Oregon that this provides—

The PRESIDING OFFICER. The Senator will suspend. There are too many people walking about and conversing in the aisles. Senators wishing to converse will please retire to the cloakroom. Members will take their seats.

The Senator from South Dakota may continue.

Mr. MUNDT. Mr. President, the proposed legislation which I introduced on August 7 and which passed the Senate on August 26 deals with situations in rural areas where such areas are suffering from a shortage of feed supply caused by natural causes, such as presently appear in certain areas of the Midwest because of drought. However, the legislation is broad enough to include such things as flood, insect damage, or something of that kind. Under present law, in order for the farmers to be benefited under these emergency situations which develop, and are not of a sustained nature over a great many years, but occur in certain areas for a shorter period of time, farmers have had to be charged 105 percent of the price, plus carrying and handling charges.

Mr. HUMPHREY. May I ask the Senator from South Dakota, the bill as it came from the House had different language than the bill as passed by the Senate.

Mr. MUNDT. Yes; in some of its provisions.

Mr. HUMPHREY. What has been proposed?

Mr. MUNDT. I moved to concur in the House amendments.

Mr. HUMPHREY. The Senator has moved to concur in the House amendments so as to expedite action?

Mr. MUNDT. That is correct. This is a matter of an emergency nature and I would like to get it finalized before adjournment.

Mr. HUMPHREY. This bill covers some feed grain situations not only in South Dakota, but wherever there is a drought, including western Minnesota.

Mr. MUNDT. That is correct. In some areas changes made by the House would make feed grain a little bit cheaper; in some places it would make it cost a little more. The purpose is to expedite action at this time.

Dr. Harker Stanton of our Senate Agriculture Committee professional staff has supplied figures to show that in actual practice the prices paid by farmers for these emergency feeds would average out about the same whether we employ the language of the House or the Senate. In adding earthquakes and insect infes-

tation to the disasters covered by my bill the House has helped the legislation by expanding its coverage. I urge concurrence and ask for immediate passage of S. 2504, as amended.

Mr. HUMPHREY. I believe it is a good change, and I am pleased that the bill is being enacted.

I think the change is very good, and I am pleased that the bill is being acted upon.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from South Dakota.

The motion was agreed to.

PERMANENCY OF CERTAIN LOANS BY SECRETARY OF AGRICULTURE—CONFERENCE REPORT

Mr. HOLLAND. Mr. President, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 7629) to make permanent the authority of the Secretary of Agriculture to make loans under section 17 of the Bankhead-Jones Farm Tenant Act, as amended, and for other purposes. I ask unanimous consent for the present consideration of the report.

The PRESIDING OFFICER. The report will be read for the information of the Senate.

The legislative clerk read the report.

(For conference report, see House proceedings of September 3, 1959, p. 16512, CONGRESSIONAL RECORD.)

The PRESIDING OFFICER. Is there objection to the present consideration of the report?

There being no objection, the Senate proceeded to consider the report.

Mr. HOLLAND. Mr. President, this is a unanimous conference report. All conferees of the Senate and the House have signed the report, and have agreed wholeheartedly upon its provisions.

This bill relates to an amendment to that section of the Bankhead-Jones Farm Tenant Act which relates to the refinancing of mortgage loans on real estate.

There were very small differences between the Senate language and the House language. The Senate language would have continued the provision in question for only 2 years. The measure as passed by the House provided for permanent enactment of that section. The Senate prevailed as to that portion of the matters in conference. In other words, the bill as reported from the conference is an extension for 2 years only of the refinancing provision of the act.

With respect to the other provision which was in conference, it had to do with enlarging somewhat the list of property items which can be offered as security, so as to include with other items already covered by the existing law, growing or recently harvested crops, which were not clearly included in the Senate bill. The House measure did include such new properties, and the conference report adopts that provision from the House bill.

The differences were minor. They have been adjusted.

I ask that the conference report be agreed to.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The report was agreed to.

EXECUTIVE PRIVILEGE IN CONNECTION WITH FOREIGN AID FUNDS

Mr. ROBERTSON. Mr. President, on behalf of the senior Senator from Louisiana [Mr. ELLENDER], the senior Senator from Minnesota [Mr. HUMPHREY], and myself, I send to the desk an amendment to the committee amendment to section 113 of H.R. 8385 and ask that it be printed.

Section 113 of the so-called foreign aid bill is substantially the same language that was incorporated in the authorization bill on the House side and known as the Porter-Hardy amendment. It requires the Administrator of ICA, upon request either of a congressional committee or the Comptroller General, to give detailed information concerning the handling of ICA funds. In approving the authorization bill the President challenged the constitutionality of the Hardy amendment and in view of the many historical precedents that have been cited in support of the President's position with respect to withholding information from the Congress, the Senate Appropriations Committee struck out section 113 of the foreign aid bill and inserted in lieu thereof a provision for formal reports to the Appropriations Committee, one to be made within 60 days following the enactment of the appropriation bill and the other within 30 days after the approval of any change in the program for the current fiscal year involving \$1 million or more. While no valid objection could be raised against reports of that character, it could not be seriously argued that they are more than a nominal substitute for the type of information contemplated by the Porter-Hardy amendment.

The addition to section 113 which we are now proposing takes cognizance of the objections raised against the House amendment by the Administrator of ICA. Yet, it seeks to preserve the constitutional right of the Congress to obtain necessary and vital information from the executive branch of the Government concerning the manner in which the taxpayers' money has been spent.

Under the Constitution, the legislative branch of the Government has the exclusive power to appropriate money from the Treasury. That constitutional power, of necessity, includes the power to obtain all necessary information as to the expenditure of appropriated funds. The Constitution explicitly requires the President to give to the Congress from time to time information concerning the state of the Union, and that must embrace the fiscal condition of the Government and the disposition of its revenues. Under the Constitution, the power to execute foreign policy reposes in the President as Chief of the executive branch of the Government. In recent

17398

CONGRESSIONAL RECORD — SENATE

September 10

years, the conflict of constitutional rights between the legislative and executive branches of the Government over the handling of appropriated funds has occurred more frequently because funds appropriated by the Congress for foreign aid have been used by the President as an instrument of foreign policy.

In recognition of the President's assertion of right to withhold information from the Congress concerning his handling of foreign policy when he thinks disclosure would not be in the public interest, our revision of section 113 provides that the Administrator of ICA can be relieved of furnishing information requested thereunder if the President certifies that in his opinion the disclosure of the information requested would be contrary to the public interest. The revised amendment also provides that the request for information shall be in writing, directed to the Administrator; and the penalty for failure to furnish the information will be the impoundment of the appropriation for the specific country or the specific project involved.

In order that Members of the Senate, before H.R. 8385 is acted on next Saturday, may know the exact language we are proposing as a substitute for section 113, I ask unanimous consent that our amendment may be printed at this point in the RECORD.

The PRESIDING OFFICER. Without objection, the amendment may be printed in the RECORD.

The amendment is as follows:

On page 10, between lines 17 and 18, insert the following:

"(d) None of the funds herein appropriated shall be used to carry out any provision of chapter II, III, or IV of the Mutual Security Act of 1954, as amended, in any country, or with respect to any project or activity, after the expiration of the twenty-day period which begins on the date the General Accounting Office or any committee of the Congress, or any duly authorized subcommittee thereof, charged with considering legislation or appropriations for, or expenditures of, the International Cooperation Administration, has delivered to the office of the Director of the International Cooperation Administration a written request that it be furnished any document, paper, communication, audit, review, finding, recommendation, report, or other material relating to the administration of such provision by the International Cooperation Administration in such country or with respect to such project or activity, unless and until there has been furnished to the General Accounting Office, or to such Committee or Subcommittee, as the case may be (1) the document, paper, communication, audit, review, finding, recommendation, report, or other material so requested, or (2) a certification by the President that he considers the disclosure of such document, paper, communication, audit, review, finding, recommendation, report, or other material to be contrary to the public interest, and has forbidden its being furnished pursuant to such request.

The PRESIDING OFFICER. The amendment will be received and printed, and will lie on the table.

Mr. HUMPHREY. Mr. President, will the Senator yield?

Mr. ROBERTSON. I yield.

Mr. HUMPHREY. The Senator has explained the adjustments made in the amendment with respect to the Mutual Security Authorization Act, which I

thought was desirable, and which I was privileged to cosponsor. I am very happy that these modifications have been made. I believe that this amendment protects the executive privilege so far as foreign policy matters are concerned.

On the other hand, it gives the Congress, a coequal branch of the Government, the authority it needs in order properly to ascertain what is being done with authorized and appropriated funds.

Mr. ROBERTSON. The Senator is correct. Whenever the President believes that foreign policy, which is under his jurisdiction, is involved, he can merely say, "It is against the public interest to give you this information." I do not believe that the President has the constitutional right to deny the Congress information as to what he does with the money we appropriate. There has been no judicial decision to that effect, and I do not know of any President who has ever claimed such a right. The question has arisen only when our foreign aid money has become involved in foreign policy.

The amendment does not mean that Congress can get everything it requests. The executive branch can mark anything "Top Secret," and I believe everybody who receives such material under those terms will honor that classification.

Mr. HUMPHREY. Indeed, it will be even more honored if it is given in a spirit of cooperation, along the lines outlined in the amendment. I hope the amendment will be adopted.

Mr. MORSE. Mr. President, will the Senator yield?

Mr. ROBERTSON. I yield.

Mr. MORSE. I think the Senator from Virginia knows that I have taken a very active part in the Committee on Foreign Relations in pressing for the very same thing which the Senator from Virginia is standing for this afternoon. If he has no objection, I should like to join with him as a cosponsor of the amendment.

Mr. ROBERTSON. The Senator from Virginia would be glad to have the Senator from Oregon enlisted as a cosponsor of the amendment.

Mr. MORSE. The Senator from Virginia has made what I consider to be an unanswerably sound constitutional law argument with respect to the appropriation power of the U.S. Congress. I have always defended Presidents in their right, under the Executive powers doctrine, to Executive privilege. But Executive privilege does not mean that the President can estop Congress from following the funds it appropriates. Congress has the constitutional power to follow the funds it appropriates. The fact that Congress appropriates funds does not mean that Congress has lost control of the funds. It is possible to get two constitutional rights somewhat at loggerheads.

The Senator from Virginia has recognized that. He has placed in the amendment language which makes very clear that Congress will not trespass upon the Executive privilege power of the President of the United States. But we are

saying, "If you refuse to give us the information we need as to what is happening to the funds we have appropriated, then we want you to know we are impounding those funds as of now." In other words, we are putting that condition on the appropriation.

In my judgment, it is completely compatible with our constitutional power, and it is something we should do, because the President is guilty of abusing the doctrine of Executive privilege. The doctrine of Executive privilege does not mean that the President must exercise such privilege under any and all conditions. As I said in a speech some weeks ago on this matter, even George Washington made perfectly clear, on the rare occasions when he exercised the Executive privilege, that ordinarily the President of the United States should grant Congress the information it needs.

The PRESIDING OFFICER (Mr. BYRD of West Virginia in the chair). The Senator from Oregon will suspend until the Senate is in order. Senators who wish to converse will please, please, retire to the cloakroom. The Senator will not proceed until the Senate is in order.

The Senator from Oregon may proceed.

Mr. MORSE. Mr. President, it has been only in rare, extraordinary circumstances that Presidents in the past have denied to Congress the information which Congress has sought in regard to a program which has been followed in connection with the expenditure of funds appropriated by Congress.

I hope to have available for the Senate by Saturday a list of the precedents in respect to the exercise of executive privilege by the preceding Presidents, because I think it becomes very enlightening as to what this President has been doing in connection with doctrine in comparison with his predecessor.

ADVISORY COMMISSION ON INTER-GOVERNMENTAL RELATIONS

The PRESIDING OFFICER. The Chair lays before the Senate the unfinished business.

The Senate resumed the consideration of the bill (S. 2026) to establish an Advisory Commission on Inter-Governmental Relations.

INVITATION TO FRIENDLY AND DEMOCRATIC NATIONS TO CONSULT WITH INDIA

Mr. JOHNSON of Texas. Mr. President, I move that the Senate proceed to the consideration of Calendar No. 591, Senate Concurrent Resolution 11.

The PRESIDING OFFICER. The concurrent resolution will be stated by title for the information of the Senate.

The LEGISLATIVE CLERK. A concurrent resolution (S. Con. Res. 11) to invite friendly and democratic nations to consult with India.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Texas.

The motion was agreed to; and the Senate proceeded to consider the con-